REMARKS/ARGUMENTS

The foregoing amendment and the following arguments are provided to impart precision to the claims, by more particularly pointing out the invention, rather than to avoid prior art.

Claim 13 has been amended. No claims have been canceled. No claims have been added. Thus, claims 1, 3-5, 7-9 and 11-16 are presented for examination. Reconsideration of the present application, as amended, is respectfully requested.

35 U.S.C. § 102(b) Rejections

Examiner rejected claims 13-16 under 35 U.S.C. § 102(b) as being anticipated by International Publication WO 97/04394 (hereinafter "Drake"). Applicants respectfully submit that independent claim 13 of the present application includes limitations not disclosed or taught by Drake. Claim 13 recites:

> An article comprising:
> a machine-readable medium having stored thereon:
> instructions which, when executed by a data processing device, cause the data processing device to:
> transfer control to a software test module when a second instruction having an instruction address in the instructions is executed by the data processing device, the second instruction replacing a non-identical first instruction comprising a target address, the first instruction to invoke a function or procedure, and <u>the first instruction comprising more bytes than the second instruction</u>;
> a test module, the test module comprising:
> a table comprising a target address of the replaced first
> instruction; and
> test instructions to produce a test result by performing a test
> on the instructions, the test module to locate the target address in the table and to transfer control to the target

address if the test result indicates the instructions are to proceed.

(Claim 13, emphasis added). Applicants respectfully submit that Drake does not teach nor suggest the limitations as claimed by applicants. In particular, Drake does not disclose replacing the first instruction with "the second instruction comprising fewer bytes than the first instruction."

Drake discloses a new process of security termed an applicator. (Drake, page 14, lines 23-25). The applicator replaces an old executable 16 with a new executable 30. (Drake, page 14, lines 26-30). Drake discusses that there must exist an "area 94" which is of greater magnitude than the size of "netsafe 1 code 104." (Drake, page 16, lines 22-25). "Area 94" refers to an area in old executable 16 that exists between two consecutive pointers within the executable code section 72 containing machine instructions for operation on a microprocessor. (Drake, page 16, lines 23-24; line 14; Figure 9; page 15, lines 36-38). "Netsafe 1 code 104" refers to an area in new executable 30 that contains code to decrypt, repatch, replace potentially insecure routines, and so on. (Drake, page 17, lines 24-27; Figure 10). Drake discusses that "area 94" in old executable 16 must be of greater magnitude than "code 104" in new executable 30.

Thus, Drake discloses that a portion (area 94) of the executable code (72) containing the instructions in the old executable 16 must be larger in size than a portion (104) of the code in the new executable 30. Drake does not teach or

suggest that the instructions in new executable are overall smaller in size that the instructions in old executable.

Indeed, the instructions contained in executable code 72 of the old executable 16 contain 3 portions: code portion B 94, code portion A 95 and code portion C 96. (Drake, page 16, lines 26-29). Drake discusses that the applicator encrypts and copies these code portions to form part 105, 103 and 106 respectively in new executable 30. (Drake, page 16, lines 26-29; Figures 9 and 10). Further, new executable 30 also includes executable code portions 104 and 107 (Figure 10). Thus, the total size of executable code (code portions 103-107) in new executable 30 may well be greater than total size of executable code 72 (portions 94-96) in old executable 16.

Therefore, Drake does not teach the limitation that the second instruction has fewer bytes than the first instruction and does not anticipate claim 13. Further, since claims 14-16 depend on claim 13, and include its limitations, Drake does not anticipate claims 14-16 under 35 U.S.C. § 102(b).

35 U.S.C. § 103(a) Rejections

Examiner rejected claims 1, 3-5, 7-9, 11 and 12 under 35 U.S.C. § 103(a) as being unpatentable over Drake in view of U.S. Patent No. 5,966,541 to Agarwal (hereinafter Agarwal).

Independent claims 1, 5, and 9 include the limitation, or a limitation similar thereto, of :

> . . .replacing the first instruction with a second non-identical
> instruction to transfer control to the test module, the second
> instruction comprising fewer bytes than the first instruction

Applicants respectfully argue that Drake and Agarwal, individually or in combination, do not teach the limitation that the second instruction has fewer bytes than the first instruction.

Agarwal discusses a method for repairing or testing a program by implementing converting code that operates on variables that can suffer a mismatch into code that correctly accounts for or tests for the mismatch. (Agarwal, Abstract). Agarwal does not teach or suggest a second instruction to replace the first instruction that comprises fewer bytes than the first instruction.

As discussed earlier, Drake does not teach that the second instruction comprises fewer bytes than the first instruction. Therefore, in view of independent claims 1, 5 and 9 including limitations that are not disclosed nor suggested by Drake or Agarwal, either individually or in combination, independent claims 1, 5 and 9 are not rendered obvious by the cited references.

In addition, the remaining claims depend from one of the independent claims as discussed above, and therefore include similar limitations, and as a result are also not rendered obvious by the cited references.

CONCLUSION

Applicants respectfully submit the present application is in condition for allowance. If the Examiner believes a telephone conference would expedite or assist in the allowance of the present application, the Examiner is invited to call John Ward at (408) 720-8300, x237.
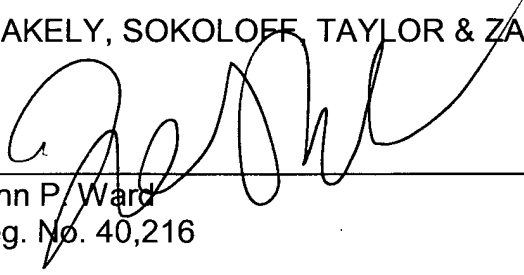
Authorization is hereby given to charge our Deposit Account No. 02-2666 for any charges that may be due.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN

Date: 1/14/05

John P. Ward
Reg. No. 40,216

12400 Wilshire Boulevard
Seventh Floor
Los Angeles, CA 90025-1026
(408) 720-8300

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